



**OF OATHS AND CONSTITUTIONS**



*“When we appreciate America for what she truly is, we know that our Declaration is worth preserving, our Constitution worth defending, our fellow citizens worth loving, and our country worth fighting for.” ([1776 Commission Report, 2021, p. 20](#))*

# OF OATHS AND CONSTITUTIONS

*By: James Baehr and Alexandra Campana*

*June 28, 2021*

“I do solemnly swear or affirm that I will support the Constitution of the United States.”  
—First oath approved by the first Act of Congress, 29 September 1789.

It was the very first act of our first Congress to establish an oath of office ([Keskel, 2002](#)). Some version of this statement has been spoken by every veteran who has raised a hand to offer their life to service and leaders in every branch of our government (5 U.S. Code § 3331, Oath of Office, 1966). The oath tells us much about how to interpret the Constitution: it tells us the Constitution actually means something; it tells us the Republic faces dangers; and it tells us how to confront those dangers. In a day and age when those threats approach ever closer from a radical view taking root across the country that [rejects the principles of the founding](#) of America and threatens national unity, we must recommit our allegiance to the Constitution and the enduring, universal principles which it outlines.

The oath shows that the Constitution has an objective, interpretable meaning. To swear “to support and defend” something outside of ourselves makes no sense if that something is simply whatever we want it to mean. The idea that the Constitution should be read like a contract was the core understanding of the founding generation and those that followed because it ensured the consent of the governed. In his seminal treatise *A Familiar Exposition of the Constitution of the United States*, Justice Joseph Story noted:

It is to be interpreted, as all other solemn instruments are, by endeavoring to ascertain the true sense and meaning of all the terms; and we are neither to narrow them, nor to enlarge them, by straining them from their just and natural import, for the purpose of adding to, or diminishing the powers, or bending them to any favorite theory or dogma of party. It is the language of the people, to be judged according to common sense, and not by mere theoretical reasoning. It is not an instrument for the mere private interpretation of any particular men.

(Story, 1840, § 42)

The corollary to this understanding of the Constitution is a commitment to the rule of law ([1776 Commission Report, 2021, p. 6](#)). When we take the oath, we promise to uphold a written law whether or not we personally agree with it. This is the basis for a social order that

recognizes that the legitimate flow of power comes only from the people through the processes outlined at our founding and not the whims of any one person. The right to govern ourselves laid out in the Constitution comes from a view of the inherent dignity of the people enunciated in the Declaration of Independence's inalienable, self-evident truth that "All men are created equal." (Spalding, 2014). The Constitution flows from the philosophical premises of the Declaration of Independence in its opening line, "We, the People..." (Spalding, 2014).

The oath shows that the Republic is never entirely safe from dangers. When we swear to defend the Constitution against "all enemies," we admit there are forces arrayed against it. At the time of the founding, those forces were powerful monarchies with little interest in seeing a representative democracy prove itself successful (Herring, 2011). Over the course of our history, the enemies of the Constitution have been internal as well as external, fought on storied battlefields both "foreign and domestic." (McPherson, 2003). These have been military battles and ideological ones against systems of slavery, fascism, communism, and others that deny inherent human dignity and individual equality ([1776 Report, 2021, pp. 10-16](#)).

Some of the most profound dangers to the Republic rest in ourselves. The Founders had a keen understanding of human nature, including our selfish ambition and tribalism, which motivated their design for our government (Madison, 1787). French political theorist Baron de Montesquieu discounted the possibility of large republics, stating that one "cannot long subsist." (Montesquieu, 1748, § 8.16). Montesquieu, like the Founders, saw men as selfish and "apt to abuse" power to benefit themselves and their groups. (Montesquieu, 1748, § 5.8). The Founders crafted the American system with a deep awareness of men's defect and the historical fragility of the type of system they were attempting to construct. In fact, Federalist No. 10 noted the typical ends of such factionalism:

"Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths." (Madison, 1787, Federalist No.10)

To counteract these challenges, the Founders focused on creating a representative and expansive system: they saw a large republic as the solution and not the problem because of how it would disperse power (Madison, 1787). The structure of government was essential. The Founders crafted a system of divided, representative government as protection against despotism.

"The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." (Madison, 1787, Federalist No. 47)

The very organizational structure of the Constitution underscores the central importance of separated powers, with Article I representing the Legislature and its lawmaking power, Article II devoted to the President as executor of the law, and Article III as the judiciary to uphold the law in specific cases and controversies (U.S. Const.).

The relationship between the states and the federal government provided an added diffusion of power and an enlargement of the Republic. (Spalding, 2014, p. 3). The Constitution served as a grant of authority from the states for certain powers to the national

government and those “necessary and proper” to carry them out (U.S. Const. art. I, sec. 8). The “police powers,” those broad and fundamental powers dedicated to the health, safety, and welfare of the people, were retained by the states and the People (Spalding, 2014, p. 483).

Although Americans revere the Bill of Rights, it is the structure of government outlined in the Constitution that preserves these liberties. Justice Antonin Scalia used to recite a list of soaring provisions guaranteeing freedom of the press, freedom of conscience, and unpunished criticism of the government. Then he would reveal that these commitments were the Bill of Rights from the 1977 Constitution of the Union of Soviet Socialist Republics. He wrote:

Wonderful stuff . . . they were not worth the paper they were printed on . . . They are what the Framers of our Constitution called ‘parchment guarantees,’ because the real constitutions of those countries—the provisions that establish the institutions of government—do not prevent the centralization of power in one man or one party, thus enabling the guarantees to be ignored. Structure is everything. (Scalia, 2008, p. 1418) (emphasis added)

Yet, the oath also shows us that our system requires a strong civil society. Montesquieu argued that the animating principle of a Republic is virtue, which is defined as “the love of the laws and of our country.” (Montesquieu, 1748, § 4.5). This virtue was not natural but required consistent self-renunciation, of focusing our happiness on “doing greater services to our country than the rest of our fellow citizens.” (Montesquieu, 1748, § 5.3). The Founders agreed on the centrality of public virtue and morality.

“Neither the wisest constitution nor the wisest laws will secure the liberty and happiness of a people whose manners are universally corrupt. He therefore is the truest friend of the liberty of his country who tries most to promote its virtue.” (Adams, 1749)

The oath itself is a solemn promise, empty if we are neither honorable nor virtuous enough to uphold it. It is a commitment to self-denial for the sake of the People and the Constitution they established. It ends by invoking the assistance of God. In this way, the oath shows us the way back from the cynical radicalisms of our age through a recommitment to an authentic view of our nation’s founding and its Constitution.

Therefore, the oath stands against the trendy, ahistorical cynicism that says America was founded to enforce and perpetuate slavery and systemic racial supremacy ([The 1619 Project](#)). Instead, as the Founders declared, the Constitution is a system to advance universal principles of human liberty and equality against governmental overreach at the behest of powerful, self-interested factions. The oath, spoken by officers and enlisted of every tribe and tongue, stands against all efforts to divide based on race, color, or class. It serves as a repudiation of the divisions of identity politics and unifies under the enduring principles of the American creed. We must return to these principles under the Constitution if we are long to endure. So help us, God.

## **AUTHOR BIOGRAPHY**

**James Baehr** is a Senior Fellow of the America First Policy Institute. He is a Major in the Marine Corps Reserve and served as a Special Assistant to the President.

**Alexandra Campana** is a policy analyst for the America First Policy Institute Center for 1776 and a former White House policy advisor.

## WORK CITED

5 U.S. Code § 3331. Oath of office, (1966).

Adams, S. (1749). Essay. *The Public Advertiser*.

Herring, G. (2011). *From colony to superpower: U.S. foreign relations since 1776*. Oxford University Press.

Keskel, K. (2002). *The oath of office: A historical guide to moral leadership*. *Air & Space Power Journal Winter 2002*.

<https://www.usmcu.edu/Portals/218/LLI/MLD/Fidelity/Oath%20of%20Office%20Historical%20Guide%20to%20Moral%20Leadership.pdf?ver=2018-09-26-095744-147>

Madison, J. (1788). *The Federalist Papers*, No. 47.

Madison, J. (1787). *The Federalist Papers*, No. 10.

McPherson, J. (2003). *The battle cry of freedom: the Civil War era*. Oxford University Press.

Montesquieu, Charles de Secondat (1748). *The spirit of laws*.

Scalia, A. (2008). Foreword: The importance of structure in constitutional interpretation, 83 *Notre Dame Law Review* 1418.

Spalding, M. & Forte, D. (2014). *The Heritage Guide to the Constitution*. Regnery Publishing.

Story, J. (1840). *A Familiar Exposition of the Constitution of the United States*.

*The 1619 Project - The New York Times*. (2019, August). The New York Times.

<https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html>

The 1776 Report (2021). The President's Advisory 1776 Commission.

<https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/The-Presidents-Advisory-1776-Commission-Final-Report.pdf>

The United States Constitution (1789).